



LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201, 202

[Docket No. 2018-2]

Group Registration of Serials

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is proposing to update its regulation governing the group registration option for serials—works such as magazines and journals. The proposed rule will make a number of changes to reflect current Office practices, promote efficiency of the registration process, and encourage broader participation in the registration system by reducing the burden on applicants. Specifically, the proposed rule will require applicants to file an online application rather than a paper application, and upload a complete digital copy of each issue through the electronic registration system instead of submitting them in physical form. It will update the eligibility requirements for this group option in several respects, such as clarifying that each issue must be published under the same continuing title. In addition, the proposed rule will remove the requirement that the claimant provide the Library of Congress with two complimentary subscriptions to that serial as a condition for using the group registration option. Under the proposed rule, however, serial publishers will remain subject to the mandatory deposit requirement. Specifically, if a serial is published in the United States in a physical format, the publisher must send complimentary subscriptions to the Library, unless it is informed that the serial title is not needed for the Library's collection. Serials published only in

electronic form will continue to be subject to the existing on-demand mandatory deposit regime. The Office invites public comment on these proposed changes.

DATES: Comments must be made in writing and must be received in the U.S. Copyright Office no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office website at <https://www.copyright.gov/rulemaking/group-serials/>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202–707–8040, or by email at rkas@loc.gov and ebertin@loc.gov; or Cindy Paige Abramson, Assistant General Counsel, by telephone at 202–707–0676, or by email at ciab@loc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

When Congress enacted the Copyright Act of 1976 (the “Act”), it authorized the Register of Copyrights (the “Register”) to specify by regulation the administrative classes of works for the purpose of seeking a registration, and the nature of the deposits required for each such class. *See* 17 U.S.C.408(c). In addition, Congress granted the Register the

discretion to allow groups of related works to be registered with one application and one filing fee, a procedure known as “group registration.” *See* 17 U.S.C. 408(c)(1). Congress recognized that requiring applicants to submit separate applications for certain types of works may be so burdensome and expensive that authors and copyright owners may forgo registration altogether, since copyright registration is not a prerequisite to copyright protection. H.R. REP. NO. 94-1476, at 154 (1976); *reprinted in* 1976 U.S.C.C.A.N. 5659, 5770; S. REP. NO. 94-473, at 136 (1975). Pursuant to the authority granted from Congress, the Register has issued regulations permitting the U.S. Copyright Office (the “Office”) to issue a group registration for limited categories of works, provided that certain conditions have been met. *See generally* 37 CFR 202.3(b)(5),(6), (9), 202.4(e), (g)–(i), (k).

II. The Existing Group Registration Option for Serials

In 1991, the Office began offering a group registration option for serials.¹ 55 FR 50556 (Dec. 7, 1990). A “serial” is defined as a “work issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely,” such as periodicals, magazines, and journals. 37 CFR 202.3(b)(1)(v).

The current group registration option for serials has a number of requirements, which are listed in different areas of the Code of Federal Regulations and in various Office publications. Specifically, applicants may use the group option (i) if the serial is “published at intervals of a week or longer”; (ii) if the issues are “published in the same

¹ Subsequently, the Office created separate group registration options for daily newspapers and daily newsletters. 57 FR 39615 (Sept. 1, 1992); 60 FR 15874 (Mar. 28, 1995). While such works meet the regulatory definition of “serials,” *see* 37 CFR 202.3(b)(1)(v), they could not be registered under the existing serial group registration option because that option was limited to serials published at intervals of a week or longer. *See* 55 FR at 50556. The Office has recently updated its regulations regarding the group registration of newspapers, 83 FR 4144 (Jan. 30, 2018), and plans to issue a proposed rule relating to the group registration of newsletters.

calendar year”; (iii) if the “application covers no more than the issues published in a given three month period”; and (iv) if the issues are “created no more than one year prior to publication.” 37 CFR 202.3(b)(6)(i), (i)(B), (i)(G). The applicant must include a “minimum [of] 2 issues” in each submission, *id.* § 201.3(c)(6), and may register the works using the online application designated for groups of serial issues, or submit a paper application on Form SE/Group, *id.* § 202.3(b)(6)(v). In addition, “[t]he claim to copyright for which registration is sought” must be “in the collective work”; the collective work must be a work made for hire; “[t]he collective work authorship” must be “essentially new material that is being published for the first time”; and “[t]he author(s) and claimant(s) of the collective work” must be “the same person(s) or organization(s).” *Id.* § 202.3(b)(6)(i)(C)–(F). The applicant must also submit a deposit consisting of one complete copy of the best edition of each issue included in the group registration.² *Id.* § 202.3(b)(6)(v)(A)(3), B(3).

The regulation also contains several provisions that are intended to help bolster the Library’s collections. To use the group registration option, “two complimentary subscriptions . . . must be entered and maintained in the name of the Library of Congress,” and applicants “must submit a letter affirming that two complimentary subscriptions to the particular serial have been entered for the Library of Congress.” *Id.* §§ 202.3(b)(6)(ii), 202.20(c)(2)(xvii). Moreover, the complimentary copies “must be submitted regularly and promptly after publication,” mailed to the Office, and received “promptly after publication of each issue of the serial.” *Id.* §§ 202.3(b)(6)(i)(A), (iii), 202.20(c)(2)(xvii).

² The “best edition” of a work is “the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be the most suitable for its purposes.” 37 CFR 202.19(b)(1)(i).

If the publisher does not comply with these requirements, the Register “may revoke the privilege” of using the group registration option.³ *Id.* § 202.3(b)(6)(iv).

The Office adopted an interim practice for mandatory deposit of serials because the Library does not desire *all* registered serials for its collections. The interim practice is reflected in the “help text” for the online application, the *Compendium of U.S. Copyright Office Practices, Third Edition*, and *Circular 62B: Copyright Registration for a Group of Serial Issues*, though not in the Office’s regulations. Under the interim practice, the Office encourages applicants to contact the Copyright Acquisitions Division (“CAD”) prior to submitting an application to determine if the Library has selected that serial for its collections. If the Library has selected the serial, CAD will notify the applicant in writing and provide instructions for seeking a group registration and for mailing complimentary subscription copies to the Library. If the serial has *not* been selected, CAD will notify the applicant that it may use the group registration option without providing subscription copies. *See* COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES sec. 1109.5(A) (3d ed. 2017) (hereinafter the “*Compendium*”); *Circular 62b: Copyright Registration for a Group of Serial Issues* at 2–3 (hereinafter “*Circular 62b*”); *Help: Serial Issues* (<http://www.copyright.gov/eco/help-serial.html>).

In addition to the above practices, Form SE/Group and Office publications list additional requirements for the group registration option for serials. Specifically, the instructions for Form SE/Group state that each issue must be published under the same continuing title, and the applicant must provide a publication date for each issue. These

³ When the Office published the regulation in the **Federal Register** it stated that providing “two complimentary subscription copies will satisfy the mandatory deposit requirement of section 407,” although this was not mentioned in the regulation itself. *See* 55 FR 50556.

requirements have appeared in Form SE/Group since at least February 2000. In addition, the *Compendium*, and *Circular 62b* state that the letter to the Office affirming the complimentary subscription should include the name of the publisher, the title of the serial, and the volume, number, issue date, or other identifying information that appear on the first issue that will be delivered to the Library. *See Compendium* sec. 1109.5(A), *Circular 62b*.

III. The Current Rule Governing Mandatory Deposit of Serials

Section 407 of the Copyright Act states that if a work is published in the United States, the copyright owner or the owner of the exclusive right of publication must affirmatively deposit two copies of the “best edition” of that work with the Library within three months after publication. 17 U.S.C. 407(a)–(b). This is known as the “mandatory deposit” requirement. As a general rule, publishers may satisfy this requirement by registering their works with the Office, or by sending copies to the Copyright Office’s Copyright Acquisitions Division (“CAD”) without seeking a registration. If a publisher fails to comply with the mandatory deposit requirement, the Office may issue a written demand for those works, and if the required copies are not received within three months thereafter, the copyright owner or owner of the exclusive right of publication in that work may be subject to fines or other monetary liability. *See id.* 407(d). The Office has the authority to establish regulations governing mandatory deposit, including regulations to exempt any categories of material from the deposit requirements. *See id.* 407(c), 702.

Serials published in a physical format (including works published both in physical and electronic formats) are subject to these affirmative mandatory deposit requirements. By contrast, in 2010, the Office adopted an interim rule that established a different process for serials published solely in electronic form. The interim rule established a

general exemption for most “[e]lectronic works published in the United States and available only online,” except for serials published solely in electronic formats (*i.e.*, “electronic-only” serials). 37 CFR 202.19(c)(5). For electronic-only serials, there is no affirmative obligation to deposit works with the Copyright Office. Instead, if the Library desires a particular serial title for its collections, the Office will issue a written demand requiring the publisher to deposit copies of those serials. 37 CFR 202.24.

Under the current regulations, the mandatory deposit requirements for electronic-only serials are significantly different than the registration deposit and submission requirements governing the group registration option for serials. For purposes of mandatory deposit, publishers are required to submit an electronic copy in a specific format, together with certain types of metadata that may be embodied in the copy. 37 CFR pt. 202, app. B, sec. IX. In addition, publishers must comply with certain “[t]echnical standards” when they submit their electronic works to the Office. 37 CFR pt. 202, app. B, sec. IX.

IV. The Proposed Rule

The existing regulations governing group registration of serials require updating. As noted above, the various rules that govern that group registration option are scattered across the Code of Federal Regulations, the *Compendium*, the relevant Circular, and the online help text for the eCO system. Accordingly, the Office is proposing to amend the regulation governing the group registration option for serials to centralize and streamline the eligibility requirements.⁴

⁴ The proposed rule also corrects an unrelated error in the preamble to the Best Edition Statement. The preamble states that “[f]or works first published only in a country other than the United States, the law requires the deposit of the best edition as first published.” 37 CFR, pt. 202, app. B. That is inconsistent with

In addition, the existing group registration regulations do not accurately reflect the Office’s current practices relating to mandatory deposit. The existing rule contemplates that registration examiners will confirm with the Library on an ongoing basis either that group registration applicants are continuing to provide serial subscriptions to the Library, or that they are exempt from that requirement. In practice, this does not happen; instead the registration examiners do not confirm whether or not subscriptions have been provided. In addition, the group registration regulations by their terms contemplate the provision of physical subscription copies to the Library for *all* serial titles that the Library wants to include in its collections. But for one category of serial titles—electronic-only serials—this rule does not apply in practice. Electronic-only serials are not obtained by the Library through subscriptions, but through a separate demand-based scheme.⁵ The proposed rule separates and clarifies the registration and mandatory deposit requirements for serials, including by making the subscription requirement part of the mandatory deposit regulations.⁶

To summarize, the proposed rule would do the following things:

(1) The rule would codify the requirement (currently found only in the Compendium) that, to be eligible for the serial group registration option, each serial issue in the group must be an “all-new” collective work that has not been previously published, and each issue must be fixed and distributed as a discrete, self-contained collective work.

section 101 of the Copyright Act, which defines “best edition” as “the edition, published in the United States at any time before the date of deposit,” and section 408(b)(3), which states that “in the case of a work first published outside the United States,” the applicant should submit “one complete copy or phonorecord as so published.” 17 U.S.C. 101, 408(b)(3) (emphasis added).

⁵ 37 C.F.R. 202.24.

⁶ The Copyright Office plans to take the same approach to registrations of single serial issues, and plans to issue an NPRM that, among other things, proposes that deposits provided with single serial issue applications will only satisfy the deposit requirements of section 408, and will not satisfy the mandatory deposit requirements in section 407.

(2) The rule would memorialize the Office’s longstanding position regarding the scope of a registration for a group of serial issues—*i.e.*, a registration for a group of serial issues covers each issue in the group, as well as the articles, photographs, illustrations, or other contributions appearing within each issue—if they are fully owned by the copyright claimant and if they were first published in those issues).

(3) The rule would require applicants to register their serials through the Office’s electronic registration system, and discontinue the existing paper application.

(4) The rule would amend the deposit requirements by requiring applicants to upload their serials in digital form through the electronic registration system. The Office will no longer accept physical copies, such as a print copy or photocopy of each issue in the group, or digital copies that have been saved onto a flash drive, disc, or other physical storage medium that is delivered to the Office.

(5) Serial publishers would no longer be required to provide complimentary subscriptions to the Library as a condition for using the group registration option, and the Register would no longer revoke the privilege of using the group registration option if the applicant fails to provide complimentary subscriptions. But the rule would also make clear that electronic deposits submitted to the Office through the registration system will not satisfy the mandatory deposit requirements in section 407. Specifically, if a serial is published in the United States in a physical format, the publisher must provide the Library with two complimentary subscriptions to the serial, unless they are informed that the serial title is not needed for the Library’s collections. Serials published only in electronic form will continue to be subject to the existing on-demand mandatory deposit regime.

(6) The rule would clarify that applicants must include at least two issues in each group registration, and maintains the requirements that each issue in the group must be a work made for hire, and the author and copyright claimant for each issue must be the same person or organization. 37 CFR 202.3(b)(6)(i)(E), (F).

(7) The rule would retain the requirement that applicants may only register serials that are “published at intervals of a week or longer” (*e.g.*, weekly, every two weeks, monthly). The rule would also retain the requirement that all of the issues included in one application be “published in a given three month period”⁷ and “in the same calendar year.”⁸ To help reinforce these longstanding requirements, the rule would expressly mandate that the issues be published under the same continuing title and bear issue dates within the three-month period specified in the application.⁹ For similar reasons, the rule would specifically require the applicant to provide a publication date for each issue in the group.

(8) The proposed rule will eliminate the requirement that “[e]ach issue must have been created no more than one year prior to publication,” *id.* § 202.3(b)(6)(i)(G), as the Office has not monitored or enforced this requirement in practice.

The next sections discuss those changes warranting more discussion.

⁷ Quarterly and semi-annual publications are not eligible for this group option, because the regulations expressly state that the applicant must submit at least two issues, and all the issues must be published within a three-month period. The Office’s rationale for creating the group registration option (*i.e.*, to encourage registration of frequently published serials by reducing the burden on applicants) does not apply in the case of such infrequently published serials.

⁸ See 37 CFR 202.3(b)(6)(i), (i)(B), (i)(G).

⁹ In this respect, the proposed rule is similar to the regulations governing the group registration options for newspapers and newsletters, which state that the issues must be published within a single calendar month and bear issue dates within that month. See 37 CFR 202.3 (b)(9)(v), 202.4(e)(4).

A. Only “All-New,” Discrete and Self-Contained Collective Works Eligible for Registration

The proposed rule clarifies that each serial issue in the group must be an all-new collective work.¹⁰ A serial will be considered a collective work if it contains “a number of contributions” that constitute “separate and independent works in themselves,” and if the contributions are “assembled into a collective whole” “in such a way that the resulting work as a whole constitutes an original work of authorship.” 17 U.S.C. 101 (definitions of “collective work” and “compilation”). A serial issue may qualify as an “all-new” collective work if it contains a sufficient amount of new compilation authorship. In other words, the issues included in the group cannot be derivative versions of a previously published issue or a serial that is frequently modified, updated, or adapted.

To be eligible for this group registration option, the serial must also be fixed and distributed as a discrete, self-contained collective work.¹¹ An applicant may satisfy this requirement if the serial as a whole is fixed in a tangible medium of expression, and the content of each issue does not change once it has been distributed. For example, a publisher that emails an electronically printed (“ePrint”) serial to its subscribers may satisfy this requirement if each issue contains a fixed selection of content, such as a PDF version of a physical publication.

By contrast, a website would not satisfy this requirement. Websites typically add, archive, and/or replace content on a continuing basis. As such, they are not fixed and distributed as discrete, self-contained collective works. Moreover, these updates are rarely distributed on an established schedule, and rarely contain numerical or

¹⁰ Currently, this requirement appears only in the *Compendium*. See *Compendium* sec. 1109.2.

¹¹ Similar language appears in the *Compendium*. See *Compendium* sec. 1113.

chronological designations distinguishing one update from the next. For this reason, websites are not considered “serials” for purposes of registration.¹²

Although the proposed rule does not extend to websites, the Office is aware of the need for establishing new and updated practices for examining and registering online works. *See, e.g.*, Comments of Newspaper Association of America (urging the Office to create a group registration option for newspaper websites), *available at* <http://www.copyright.gov/rulemaking/online-only/comments/naa.pdf>; Comments of the National Writers Union, Western Writers of America, and American Society of Journalists and Authors (urging the Office to create a group registration option for multiple works published online on different dates), *available at* <https://www.regulations.gov/contentStreamer?documentId=COLC-2016-0005-0009&attachmentNumber=1&disposition=attachment&contentType=pdf>; *see also* 81 FR 86634, 86636-37 (Dec. 1, 2016); 81 FR 86643, 86646 (Dec. 1, 2016). The Office is considering these issues and will take them into account when developing its priorities for future upgrades to the electronic registration system.

B. Scope of Protection

The proposed rule clarifies that a registration for a group of serials covers each issue in the group, and each issue will be registered as a separate collective work. In other words, the group registration is treated as the legal equivalent of a separate collective work registration for each serial issue.

¹² *See* 37 CFR 202.3(b)(1)(v) (defining a “serial” as “a work issued or intended to be issued in successive parts bearing numerical or chronological designations”); *see also* 75 FR 3863, 3865 (Jan. 25, 2010) (noting that works “that are constantly updated with no demarcations between particular, discrete issues of the publication” are not considered serials).

As a general rule, a registration for a collective work covers the individual contributions contained within that work if they are fully owned by the copyright claimant and if they were first published in that work.¹³ Because a registration for a group of serial issues effectively is treated as a separate collective work registration for each issue in the group, a group registration also covers the articles, photographs, illustrations, or other contributions appearing within each issue—if they are fully owned by the copyright claimant at the time the application was filed and if they were first published in those issues. *See* 55 FR at 50557 (stating that publishers may “register claims in individual contributions published for the first time in the serial, if the publisher has obtained ownership of the copyright”). By contrast, if an issue contains contributions that are not fully owned by the copyright claimant, and/or contributions that were previously published, the registration will not extend to those works. *See Morris v. Business Concepts, Inc.*, 259 F.3d 65, 71 (2d Cir. 2001) (“Unless the copyright owner of a collective work also owns all the rights in a constituent part, a collective work registration will not extend to the constituent part.”), *abrogated on other grounds by Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 160 (2010).

With respect to the information collected as part of a group registration and examination practices, the Office must balance the public interest in creating a meaningful record (*i.e.*, collecting information regarding each individual contribution within a serial issue) with the relative burden on applicants wishing to participate in the

¹³ *See, e.g., Alaska Stock, LLC v. Houghton Mifflin Harcourt Pub. Co.*, 747 F.3d 673, 683 (9th Cir. 2014); *Morris v. Bus. Concepts, Inc.*, 259 F.3d 65, 68 (2d Cir. 2001); *Compendium* secs. 509.1, 509.2; *see also* 17 U.S.C. 201(c) (“Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work . . .”).

registration system. When an applicant submits up to three months of serial issues for registration, it is difficult to collect granular information concerning the individual articles, photographs, and other component works within each issue. Requiring applicants to identify the author and title of each individual contribution would impose a significant burden both on applicants and the Office alike. This would discourage registration, which in turn, would diminish the value of the Office's public record. Imposing these burdens would also be contrary to the Congressional purpose of providing the Office with the authority to create group registration options: to ease the registration of certain works.

Accordingly, the Office's current application form for a group of serial issues does not allow for the applicant to expressly assert a claim in the individual contributions appearing within each issue, provide titles, authors, or other identifying information for each contribution, or identify component works created by a third party and transferred to the claimant by written agreement. But the Office foresees the future possibility of applicants submitting metadata for the component works appearing within each issue, and the possibility of the Office incorporating this information into the registration record. If this becomes feasible once the Office implements its next-generation registration system, it may require this type of information as a condition for using this group registration option.

When the examiner reviews each serial issue, he or she will examine the issue as a whole to determine if it contains sufficient compilation authorship to warrant registration. And the examiner will review the serial issue to determine whether it contains "a number of contributions" constituting "separate and independent works in themselves." 17 U.S.C. 101 (definition of "collective work"). When the Office issues a group registration, the

certificate will identify the title, author, and claimant for each serial issue in the group, but it will not identify the titles, authors, or claimants for the individual contributions appearing within those issues.

The scope of protection for a group registration issued under the proposed rule will have two consequences in infringement actions. First, a group registration may be used to satisfy the statutory requirements for instituting an infringement action involving any of the serial issues that were included within the group, or any of the individual contributions appearing within those issues—provided that the claimant fully owned those contributions at the time the application for registration is submitted, and provided that the contributions were first published in one of those issues.¹⁴ 17 U.S.C. 411(a).

Second, the proposed rule also clarifies that the group as a whole is not considered a compilation, a collective work, or a derivative work. Instead, the group is merely an administrative classification created solely for the purpose of registering multiple collective works with one application and one filing fee. The chronological selection, coordination, and arrangement of the issues within the group is entirely dictated by the regulatory requirements for this option. Likewise, when a group of serial issues are combined for the purpose of facilitating registration, those works are not “recast, transformed, or adapted” in any way, and the group as a whole is not “a work based upon one or more preexisting works” because there is no copyrightable authorship in simply collecting a month of issues and arranging them in chronological order. 17 U.S.C. 101 (definition of “derivative work”).

¹⁴ Alternatively, a plaintiff may satisfy this statutory requirement if the Office refused registration, provided that the plaintiff serves a copy of the complaint on the Register of Copyrights. 17 U.S.C. 411(a).

C. Online Registration Requirement

The current regulation states that applicants may register their works with the online application designated for groups of serial issues, or in the alternative, they may submit a paper application using Form SE/Group. 37 CFR 202.3(b)(6)(v). Under the proposed rule, applicants will be required to use the electronic application designated for a group of serial issues as a condition for seeking a group registration. The Office will no longer accept groups of serial issues submitted for registration on paper using Form SE/Group.¹⁵ If, after the effective date of this rule, such paper applications are received, the Office will refuse registration and instruct the applicant to resubmit the claim through the electronic system. The Office invites comment on this proposal, including whether the Office should eliminate the paper application for serial issues, phase it out after a specified period of time, or continue to offer Form SE/Group for applicants who prefer to use the paper-based system.

The Office's decision to offer a group option is entirely discretionary, and Congress gave the Office broad authority to establish the requirements for these types of claims. 17 U.S.C. 408(c)(1). Currently, the vast majority of the claims submitted on Form SE/Group require correspondence or other action from the Office, which increases overall pendency and contributes to the Office's backlog of pending claims. For example, applicants routinely file claims that are not eligible for this group option, fail to provide

¹⁵ Because the Office is proposing to eliminate Form SE/Group and require applicants to submit their claims through the electronic registration system, the term "SE/Group" will soon be obsolete. Going forward, the Office will refer to this registration option as "GR/SE," which stands for "group registration of serials." In addition, the Office recently issued a final rule that requires applicants to file an online application in order to correct or amplify the information set forth in a basic registration for any work capable of being registered through the electronic system, rather than filing a paper application. 82 FR 27424 (June 15, 2017). This online filing requirement will apply to supplementary registrations for groups of serial issues—even if the issues were originally registered using Form SE/Group. *See* 81 FR 86656, 86657 n.3 (Dec. 1, 2016).

information expressly requested on the form, or add extraneous information that is not requested. In each case, however, the Office must first scan these paper applications into the registration system and input the relevant information by hand before an examiner can reject the application as having been improperly filed. This is a cumbersome, labor-intensive process. In many cases, the Office must contact the applicant to request additional information or permission to correct the application.

Addressing these issues imposes significant burdens on the Office's limited resources, and has had an adverse effect on the examination of other types of works within the Literary Division of the Registration Program. Eliminating the paper application should mitigate many of these problems. Among other improvements, the online application contains automated validations that prevent applicants from submitting applications that fail to comply with the eligibility requirements for this group option, such as submitting a single issue rather than a group of two or more issues.

For these reasons, the Office believes that requiring applicants to submit online applications is necessary to improve the overall efficiency of the group registration process.

D. Digital Registration Deposits

As noted above, the proposed rule will require applicants to submit a complete copy of each serial issue in the group in digital form and upload each issue through the electronic system. Requiring applicants to upload digital copies to the electronic system will increase the efficiency of the group registration process. The Office does not need physical copies to examine a serial for copyrightable authorship, or to determine whether the applicant satisfied the formal and legal requirements for this group option. *See* 17 U.S.C. 410(a) (providing that the Register of Copyrights must determine whether

“material deposited [for registration] constitutes copyrightable subject matter”).

Electronic submissions also take less time to process, and are easier to track and handle than physical copies. A registration specialist can examine a digital copy as soon as it has been uploaded to the electronic registration system. By contrast, when an applicant submits an online application and mails a physical deposit to the Office, it may take weeks to connect the application with the correct deposit. In addition, each copy must be moved multiple times during the examination process.

Requiring digital uploads may also provide serial publishers with certain legal benefits. When the Office registers a group of serials and issues a certificate of registration, the effective date of registration is the date on which the Office received the application, filing fee, and deposit in proper form. When an applicant uploads a digital copy of the deposit to the electronic system, the Office typically receives the application, filing fee, and deposit on the same date. By contrast, when an applicant sends physical copies to the Office the deposit may arrive long after the date that the application and filing fee were received—thereby establishing a later effective date of registration.

Moreover, if an applicant uploads a complete copy of the serial through the electronic registration system, the Office will retain a digital copy of those issues in its repository of electronic deposits. Digital copies are much easier to store and retrieve. This is critical if the copyright owner or other interested parties need to obtain a copy of a particular issue for use in litigation or another legitimate purpose.¹⁶

¹⁶ The Office recognizes that some publishers may not have a digital copy of their issues or may find it difficult to create a digital copy for the purpose of seeking a group registration. The Office will address these concerns on a case-by-case basis. If an applicant is unable to upload a particular newsletter to the electronic system, the applicant may request special relief from the deposit requirements under 37 CFR 202.20(d).

E. Mandatory Deposit

Although the proposed rule eliminates the requirement to provide subscriptions or microfilm as a condition of using the group registration option, serials will still be subject to the mandatory deposit requirement under section 407.

To assist publishers with complying with these mandatory deposit requirements, the proposed rule amends the Office's mandatory deposit regulations, 37 CFR 202.19, to provide specific rules for serials that are published in the United States in a physical format, or in both a physical and electronic format.¹⁷ Publishers will be expected to provide the Library with two complimentary subscriptions to such serials, unless they have been informed by CAD that the serial title is not needed for the Library's collections. If subscription copies are not received within three months after publication of each issue, CAD may issue a written demand for ongoing subscriptions to that publication. The failure to provide subscription copies when demanded by the Office would subject the owner to penalties under section 407.

No change is being made to the mandatory deposit scheme for electronic-only serials; such serials will continue to be subject to the existing, demand-based mandatory deposit scheme.¹⁸

IV. Conclusion

The proposed rule will encourage broader participation in the registration system, and increase the efficiency of the process for both the Office and copyright owners alike,

¹⁷ The same proposal is being made as part of the notice of proposed rulemaking relating to group registration of newsletters.

¹⁸ See 37 CFR 202.19(c)(5), 202.24(a).

while providing the Library with a means for adding serials to its collections through mandatory deposit. The Office invites public comment on all of these proposed changes.

List of Subjects in 37 CFR Part 201

Copyright, General Provisions

List of Subjects in 37 CFR Part 202

Copyright, Preregistration and registration of claims to copyright

Proposed Regulation

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR parts 201 and 202 as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Amend § 201.1 by revising paragraph (c)(6) to read as follows:

§ 201.1 Communication with the Copyright Office.

* * * * *

(c) * * *

(6) *Mandatory Deposit Copies.* Mandatory deposit copies of published works submitted for the Library of Congress under 17 U.S.C. 407 and § 202.19 of this chapter (including complimentary subscriptions to serial publications), and newspaper microfilm copies submitted under § 202.4(e) of this chapter, should be addressed to: Library of Congress, U.S. Copyright Office, Attn: 407 Deposits, 101 Independence Avenue SE, Washington, DC 20559-6600.

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3. Amend § 201.3 by revising paragraph (c)(6) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * *

(c) * * *

(6) Registration of a claim in a group of serials (per issue, minimum two issues)

* * * *

Part 202 - PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

4. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

§ 202.3 [Amended].

5. Amend § 202.3 by removing and reserving paragraph (b)(6).

6. Amend § 202.4 as follows by adding paragraph (d) and revising the first sentence of paragraph (n) to read as follows.

§ 202.4 Group Registration.

* * * *

(d) *Group registration of serials.* Pursuant to the authority granted by 17 U.S.C.

408(c)(1), the Register of Copyrights has determined that a group of serial issues may be registered with one application, the required deposit, and the filing fee required by

§ 201.3(c) of this chapter, if the following conditions are met:

(1) *Eligible works.* (i) All the issues in the group must be serials.

(ii) The group must include at least two issues.

(iii) Each issue in the group must be an all-new collective work that has not been previously published, each issue must be fixed and distributed as a discrete, self-contained collective work, and the claim in each issue must be limited to the collective work.

(iv) Each issue in the group must be a work made for hire, and the author and claimant for each issue must be the same person or organization.

(v) All of the issues in the group must be published at intervals of a week or longer.

(vi) All of the issues must be published within three months, under the same continuing title, within the same calendar year, bearing issue dates within those months, and the applicant must specify the date of publication for each issue in the group.

(2) *Application.* The applicant must complete and submit the online application designated for a group of serial issues. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(3) *Deposit.* The applicant must submit one complete copy of each issue that is included in the group. The issues must be submitted in digital form, and each issue must be contained in a separate electronic file. The applicant must use the file-naming convention and submit digital files in accordance with instructions specified on the Copyright Office's website. The files must be submitted in Portable Document Format (PDF), they must be assembled in an orderly form, and they must be uploaded to the electronic registration system as individual electronic files (*i.e.*, not .zip files). The files must be viewable and searchable, contain embedded fonts, and be free from any access restrictions (such as those implemented through digital rights management) that prevent the viewing and examination of the work. The file size for each uploaded file must not

exceed 500 megabytes, but files may be compressed to comply with this requirement.

Copies submitted under this paragraph will be considered solely for the purpose of registration under section 408 of title 17 of the United States Code, and will not satisfy the mandatory deposit requirement under section 407 of title 17 of the United States Code.

* * * *

(n) * * * When the Office issues a group registration under paragraph (d) or (e) of this section, the registration covers each issue in the group and each issue is registered as a separate collective work. * * *

7. Amend § 202.19 by adding paragraph (d)(2)(x) to read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

* * * *

(d) * * *

(2) * * *

(x) In the case of serials (as defined in § 202.3(b)(1)(v), but excluding newspapers) published in the United States in a physical format, or in both a physical and an electronic format, the copyright owner or the owner of the exclusive right of publication must provide the Library of Congress with two complimentary subscriptions to the serial, unless the Copyright Acquisitions Division informs the owner that the serial is not needed for the Library's collections. Subscription copies must be physically mailed to the Copyright Office, at the address for mandatory deposit copies specified in § 201.1(c) of this chapter, promptly after the publication of each issue, and the subscription(s) must be maintained on an ongoing basis. The owner may cancel the subscription(s) if the serial is no longer published by the owner, if the serial is no longer published in the United States

in a physical format, or if the Copyright Acquisitions Division informs the owner that the serial is no longer needed for the Library's collections. In addition, prior to commencing the subscriptions, the owner must send a letter to the Copyright Acquisitions Division at the address specified in § 201.1(b) of this chapter confirming that the owner will provide the requested number of subscriptions for the Library of Congress. The letter must include the name of the publisher, the title of the newsletter, the International Standard Serial Number ("ISSN") that has been assigned to the newsletter (if any), and the issue date and the numerical or chronological designations that appear on the first issue that will be provided under the subscriptions.

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§ 202.20 [Amended].

8. Amend § 202.20 by removing and reserving paragraph (c)(2)(xvii).

Appendix B to Part 202 [Amended].

9. In Appendix B to Part 202, remove the sentence "(For works first published only in a country other than the United States, the law requires the deposit of the best edition as first published.)" and replace with "(For works first published only in a country other than the United States, the law requires the deposit of the work as first published.)"

Dated: May 10, 2018.

Sarang Vijay Damle,
General Counsel and
Associate Register of Copyrights

[BILLING CODE 1410-30-P]

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